STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN STATE UNIVERSITY, Petitioner-Appellee,	UNPUBLISHED February 15, 2005
v	No. 250813 Tax Tribunal
CITY OF LANSING, Respondent-Appellant.	LC Nos. 00-286639; 00-293616

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Respondent city appeals two orders of the Michigan Tax Tribunal (MTT or tribunal), one of which granted summary disposition in favor of petitioner MSU on its claim that certain property owned by the university located in the city is tax-exempt, and a second order that denied the city's motion for summary disposition with respect to the city's argument that the MTT did not have subject-matter jurisdiction in light of MSU's alleged failure to timely and properly appeal the tax assessment at issue. We affirm.

This Court reviews decisions of the MTT in accordance with Const 1963, art 6, § 28. *Wayne Co v Michigan State Tax Comm*, 261 Mich App 174, 186; 682 NW2d 100 (2004). "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28. One of the grounds listed for reversal is "error of law." We review legal issues, including issues of statutory interpretation, de novo, and this standard of review applies in MTT cases, as in other cases. See *Florida Leasco, LLC v Dep't of Treasury*, 250 Mich App 506, 507; 655 NW2d 302 (2002). All factual findings are final if supported by competent, material, and substantial evidence on the record. *Wayne Co, supra* at 186. "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Id.* at 186-187 (citations omitted).

This case involves the taxation of MSU property upon which is located the James B. Henry Center for Executive Development and an adjoining hotel whose lessee maintains it as the

Candlewood Suites Hotel. The taxable years at issue are 2001 through 2003,[1] and the property had previously enjoyed tax-exempt status. The city maintained that some of the functions at the conference center have no educational connection and that the hotel is open to the public, is leased to a for-profit hotel chain, and has a high standard of luxury. Therefore, the city argued that the property is subject to taxation. MSU contended that the conference center is integral to the educational function of its business school and that the hotel, though open to the public, is nevertheless part of MSU's educational mission as it provides a place to stay for people who attend the conferences that the business school sponsors. MSU argued that, regardless, because the property is considered state-owned property, it is exempt from taxation.

On July 30, 2001, MSU filed an appeal with the MTT, maintaining that the city could not tax the property. MSU contended that it could not file its petition before the standard June 30th deadline and could not present a challenge to the board of review because the city's notice of assessment was not received until July 10, 2001, at which time a protest before the board was not possible as the board had already convened and concluded its session. The city countered, arguing that the property's assessment change notice was timely mailed to MSU in February 2001 and that the university could thus have made the required protest to the board of review and timely filed an appeal with the MTT. The particulars concerning the mailing of the notice will be discussed infra. The city moved for summary disposition on the basis that MSU's failure to properly and timely invoke the jurisdiction of the MTT deprived the tribunal of its subject-matter jurisdiction under MCL 205.735. Following a prehearing conference, in which the tribunal was reminded of the city's motion for summary disposition, a "summary of prehearing conference and scheduling order" was entered, in which the MTT denied the motion, ruling:

Respondent filed a Motion for Summary Disposition contending Petitioner failed to invoke the Tribunal's Jurisdiction by failing to appear and protest the exempt status before the local Board of Review. Petitioner claims that they did not receive notice of the tax assessment until July 10, 2001. Respondent offers as proof an affidavit indicating that a mass mailing of the tax assessment occurred on February 28, 2001. The Tribunal finds, based upon those facts there is no clear indication within the case file to determine exactly when the notice of assessment was issued for the Tribunal to determine if Petitioner failed to protest and establish jurisdiction of the tax assessment before the June 30 deadline or whether to adopt the Petitioner's position that it did not receive notice until July 10, 2001[,] where Petitioner can [challenge the] tax assessment within 30 days pursuant to MCL 205.735(2); thus, it would be unfair for the Tribunal to grant a judgment for summary disposition against Petitioner based on the information MSU also moved for summary disposition, arguing that the property was exempt from taxation because, pursuant to the Michigan Constitution, statutes, and case law, it is public property belonging to the state. The MTT agreed and entered judgment in favor of the university.

In regard to the city's motion for summary disposition on the matter of subject-matter jurisdiction, we find no error in the MTT's ruling. The city relies on a letter from an account

[1] We presume that 2004 and 2005 are now also at issue, with the parties awaiting the disposition of this action.

manager who works for Lason, a company that assists the city with mailing assessment notices. The letter provided:

> This is to confirm that I was the account manager on your tax assessment mailing. The larger file which was real property mailed 2/28 the quantity was 42,801. The personal property mailed 2/22, and the quantity was 3,665.

The city also relies on an affidavit by Diane Lee, who is the principle appraiser for the city and whose job function, in part, is to ensure that assessment notices are prepared and sent to taxpayers in a timely manner. She averred in pertinent part:

> 3. For a number of years the City has retained the services of Lason to provide assistance . . . .
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> 4. I have been informed by the account manager of Lason that 42,801 real property notices of assessments were mailed by Lason on February 28, 2001 for tax year 2001.
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> 5. I am informed and believe that of these 42,801 notices was a notice mailed to Petitioner for the tax year under appeal.

The other documents on which the city relies are a duplicate notice of assessment, which lacks any indication of a mailing date, and copies of general notices printed in the Lansing State Journal giving dates, times, and locations for board of review hearings.

We conclude that the MTT's determination that the city failed to provide adequate proof establishing timely mailing of the notice of assessment is supported by competent, material, and substantial evidence. In the context of summary disposition, the evidence submitted by the city, in the face of MSU's assertion that the notice was received in July 2001, was insufficient to support its position and insufficient to require the submission of documentary evidence in response; the city's evidence was so lacking that it did not give rise to a genuine issue of fact. The letter from Lason's account manager is vague and speculative and speaks of 42,801 mailed notices without any specification. The "affidavit" by the city appraiser does not contain information based on personal knowledge regarding the mailing of an assessment notice to MSU and is merely a reassertion of the Lason letter. The other documents presented by the city add nothing to its position that the notice was timely mailed to MSU. Regardless of the mailing date, there was no evidence to contradict MSU's position that the notice was actually received in July 2001.

However, our analysis of this issue does not end as we must ascertain the impact of an untimely mailing of a tax assessment notice in relation to the relevant statutory provisions. The city argues that under MCL 205.735(1), if a party claims an exemption, the assessment must be protested before the board of review before the MTT acquires subject-matter jurisdiction over the dispute. MCL 205.735(1) provides, in pertinent part, "For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (2)[.]" MCL 205.735(2) provides that "[t]he jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the

tax year involved." Subsection (2) also provides, "In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review[.]" Here, the case clearly involves an assessment dispute; therefore, the June 30 deadline would be applicable. Furthermore, because an exemption is claimed, a protest before the board of review would also be necessary. MCL 205.735 does not address a situation where there is an untimely notice of assessment that makes it impossible to satisfy the board of review and June 30th deadline requirements.

In *Parkview Mem Ass'n v City of Livonia*, 183 Mich App 116; 454 NW2d 169 (1990), the city mailed tax assessment notices to the petitioners two days after the board of review had concluded its duties, and therefore the petitioners were unable to protest their assessments before the board. The *Parkview* panel noted that a condition precedent to the MTT's "exercise of its jurisdiction to review the assessment of petitioners' property was that petitioners protest the assessments to the board of review." *Id.* at 118-119. This Court stated:

> We adopt the Supreme Court's remedial approach in [*W & E Burnside, Inc v Bangor Twp*, 402 Mich 950*l*; 314 NW2d 196 (1978)] here. Respondents' notices of assessment were sent in violation of MCL 211.24c(5)[now subsection (4)][2] . . . . Under that statute the assessments remain valid. Nevertheless, respondents' late notices were not given in a manner reasonably calculated under all the circumstances to apprise petitioners of the assessments and to afford them an opportunity to be heard. See *Bickler v Dep't of Treasury*, 180 Mich App 205, 211; 446 NW2d 644 (1989). Petitioners will thus be denied due process unless they are given an opportunity to be heard. *Id.* Under the Supreme Court's *Burnside* decision, petitioners are not entitled to challenge the assessments in circuit court despite respondents' improper notice. Based on these considerations and consistent with the Supreme Court's *Burnside* decision, we conclude that petitioners' claims should be heard by the Tax Tribunal. [*Parkview, supra* at 120.]

This Court further stated that it considered the "jurisdictional" requirements of MCL 205.735 to actually be "procedural requirements for perfecting an appeal in the Tax Tribunal." *Id.* at 121. The panel found the board protest requirement to be a codification of the doctrine of exhaustion of remedies and the June 30 deadline to be a statutory time limitation. *Id.* Neither

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[2] MCL 211.24c(4), which addresses the required notice for assessment increases such as in the situation here, provides:

> The assessment notice shall be addressed to the owner according to the records of the assessor and mailed not less than 10 days before the meeting of the board of review. The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property.

doctrine, according to the Court, is a limitation on the subject-matter jurisdiction of the tribunal before which the claim is asserted. *Id.* The Court concluded:

> Considering the requirements of MCL 205.735 . . . as procedural requirements for the perfection of an appeal of an assessment is consistent with the remedy fashioned for the plaintiffs in the Supreme Court's *Burnside* decision. It affords taxpayers such as petitioners and the *Burnside* plaintiffs, who demonstrate that they have been deprived of notice of an assessment in time to protest before the board of review, an opportunity to obtain a review of the assessment in the Tax Tribunal. [*Parkview, supra* at 121.]

We recognize that *Parkview* is not binding authority under MCR 7.215(J)(1)[3] and that later binding cases from this Court have stated generally that the requirements of MCL 205.735 are jurisdictional and must be satisfied in order for the MTT to invoke its subject-matter jurisdiction. See *Electronic Data Systems Corp v Flint Twp,* 253 Mich App 538, 542-544; 656 NW2d 215 (2002)(citing cases decided before and after *Parkview* was decided); *Covert Twp v Consumers Power Co,* 217 Mich App 352, 355-356; 551 NW2d 464 (1996). *Parkview,* however, is directly and more on point as it specifically addresses the failure to provide timely notice that would have allowed a party to meet the requirements of MCL 205.735 and it must be remembered that *Parkview* was predicated on a Supreme Court decision which is, of course, binding precedent that trumps opinions emanating from this Court. The due process concerns enunciated in *Parkview* are compelling. If a taxing authority can avoid board and tribunal review of assessments by mailing untimely notices, a property owner's due process rights are unquestionably impaired. Moreover, the city itself cites *Parkview* with favor and presents no argument whatsoever as to why the principles from the case should not be applied in the case at bar. The city's argument on this issue is cursory and lacks sufficient detail and analysis. An appellant may not leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Mudge v Macomb Co,* 458 Mich 87, 105; 580 NW2d 845 (1998)(citation omitted). We therefore decline to further explore this issue and affirm the MTT's ruling on the matter.[4]

Turning to the issue whether the property is tax-exempt, we agree with the MTT that the property is not subject to taxation under Michigan law. Our constitution provides that the Legislature shall appropriate monies to maintain MSU, as well as several other institutions of higher learning. Const 1963, art 8, § 4. It further provides that "the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University[.]" Const 1963, art 8, § 5. Article 8, § 5, also describes

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[3] "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990 . . . ." MCR 7.215(J)(1). *Parkview* was issued on April 2, 1990.

[4] We also note that the jurisdictional issue only pertains to the dispute over the initial 2001 assessment because the university properly and timely challenged later assessments.

the structure and authority of the various boards, as well as setting forth the appointment and election process. Clearly, MSU and the other public universities named in the constitution are arms of the state.

Pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. "Public property belonging to the state, except licensed homestead lands, part-paid lands held under certificates, and lands purchased at tax sales, and still held by the state is exempt from taxation under this act." MCL 211.7*l*. The MTT ruled that the property at issue is public property belonging to the state, and thus MCL 211.7*l* dictates that the property is not subject to taxation. We agree.

As early as 1890, the Michigan Supreme Court in *Auditor Gen v Regents of the Univ*, 83 Mich 467; 47 NW 440 (1890), confronted a similar issue, where real property titled in the name of the regents of the University of Michigan was assessed upon the general tax-roll of the city of Detroit. There was no question regarding the title and ownership of the land, "and the only question presented [was] whether the land was exempt from taxation." *Id.* at 468. The Court ruled:

> We are of the opinion that the land in question is exempt from taxation under the terms of the above statute [which provided that all public property belonging to this state shall be exempt from taxation]. The property held by the regents . . . in their corporate capacity is the public property of the state held by the corporation in trust for the purposes to which it was devoted. It does not follow that the state can have no property except such as is in the control and at the disposition of the legislature. The legislature is not the state, but only a department of the state. . . . They have said that all public property belonging to the state shall be exempted from taxation. The public property belonging to the state includes the property of all public departments of the state; such as the Michigan University . . . and other public institutions supported by the state through taxation or by funds or property appropriated by public or private generosity for that purpose. [*Id.* at 469-470.]

Likewise, in *Lucking v People*, 320 Mich 495, 497; 31 NW2d 707 (1948), the plaintiff sought a court order requiring "the placing of certain property of University of Michigan on the tax roll and for other relief." The Supreme Court held:

> The lands, buildings and equipment under the management, supervision and control of the board of regents of the university are public property, owned by the State of Michigan. Such public property belonging to the State is exempt from property tax. [*Id.* at 503 (citations omitted).][5]

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[5] In *Detroit v George*, 214 Mich 664, 672-673; 183 NW 789 (1921), the Supreme Court also agreed that the property of a public university is property belonging to the state and is exempt
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Accordingly, we hold that MSU's property is public property belonging to the state. MCL 211.7*l* additionally provides that the exemption "shall not apply to lands acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the lands are located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition." The city vaguely argues that MSU failed to submit the evidence necessary to comply with this portion of MCL 211.7*l* and that, in general, MSU failed to submit the necessary proof to show ownership in the land and the buildings. As argued by MSU, the city's argument relative to documentary evidence concerning ownership and post-1966 conveyances lacks merit.

The tribunal record contains numerous copies of deeds and other real estate or conveyance documents that relate to the property which were submitted by MSU. The city stipulated below that "all the exhibits of Petitioner and Respondent are authentic." Some of the conveyance documents submitted to the MTT did not include recording information on them from the register of deeds office. MSU has now attached to its appellate brief certified copies of the conveyance documents submitted below, which reflect when they were recorded. The certified copies indicate that MSU complied with the requirements of MCL 211.7*l* and reflect ownership. Although the certified copies would constitute an expansion of the record, and we recognize that a party may not expand the record on appeal, *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002), the city agreed that the documents were authentic, the city did not present any documentary evidence necessary to create an issue of fact in the face of MSU's assertion that MCL 211.7*l* was applicable and its introduction of the various deeds, and the city still does not specify how MSU failed to meet the requirements of the statute or show ownership, despite the easy accessibility of the recorded information. As such, we find no basis for reversal and no basis to conclude that MSU cannot utilize the tax exemption found in MCL 211.7*l*.

The city's focus on the actual use of the property, as opposed to the ownership of the property, arises out of its contention that MCL 211.7n precludes a tax exemption because MSU's property is not used solely for educational purposes. We first note that the Supreme Court precedent recited above makes no distinctions between university property used for educational purposes and university property used for purposes not related to education. MCL 211.7n provides, in relevant part, that the "[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act." Assuming that MCL 211.7n is relevant and precludes MSU from using that particular statutory provision to gain tax-exempt status, the city fails to explain why MSU cannot seek an exemption under another statute such as MCL 211.7*l*. The city's position is illogical. MCL 211.7n does not demand that every nonprofit educational institution seek exemption solely under its language to the exclusion of all other statutory-exemption provisions. As stated by the MTT, the subject

(…continued)

from taxation.

property is exempt from taxation pursuant to MCL 211.7*l*; therefore, no "use" test under MCL 211.7n is necessary.[6]

MCL 211.181, which discusses the impact of leasehold interests, does not alter our conclusion that MSU is not subject to taxation in this matter despite the fact that a lease affects the property. The statute provides:

> (1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.
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> (2) Subsection (1) does not apply to all of the following:
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> (a) [P]roperty of a state-supported educational institution, enumerated in section 4 of article VIII of the state constitution of 1963. . . .

The exception applies here as MSU is a state-supported institution under Const 1963, art 8, § 4. Furthermore, the language of the statute indicates that it would be the lessee who bears the tax burden should the statute be applicable. Pursuant to our review under Const 1963, art 6, § 28, the MTT did not err in ruling that MSU's property is exempt from taxation.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Peter D. O'Connell

[6] The MTT, noting that it was unnecessary, nonetheless decided to address whether the property was solely used for educational purposes. The MTT found that the property is used for educational purposes in accordance with MCL 211.7n. We decline to express an opinion on this ruling as it is unnecessary.